



Plaintiffs' agreement to remove the audio from the Video, however, does not resolve all the other impediments to the Video's admissibility. Namely, even without audio, the Video still contains scenes that are plainly inadmissible, in that they do not reflect Mr. Loveland's day-to-day life. These scenes include the following: (1) pictures of the Tire at Issue on the Subject Vehicle; (2) video of Interstate 80 and the accident scene; (3) pictures of the accident scene and Mr. Loveland at the accident scene; (4) written transcriptions of bystanders' 911 calls that play on the Video concurrently with the audio of these calls; (5) pictures and video of Mr. Loveland before the accident; (6) pictures of Mr. Loveland in the hospital following the accident; and (7) interviews with Mr. Loveland's mother and sister.

Again, because these scenes do not show the very thing the Video purports to show—i.e., a day in the life of Shane Loveland—they are inadmissible. *See Bannister v. Town of Noble, Okl.*, 812 F.2d 1265, 1269 (10th Cir. 1987).

Video clips of Mr. Loveland receiving therapy, even without audio, present similar problems. First, footage of therapists talking, as opposed to footage of these therapists actively providing therapy to Mr. Loveland, does not show Mr. Loveland's day-to-day life—it shows unidentified people talking. This footage would do nothing more than confuse the jury, and should be excluded for this reason alone under Federal Rule of Evidence 403.

Second, and perhaps more importantly, Plaintiffs have not presented any evidence that Mr. Loveland is currently receiving any of the therapy, or types of therapy, shown in the Video. Indeed, the evidence adduced in discovery suggests that Mr. Loveland is not currently receiving any of the therapy shown in the Video. Plaintiffs had the opportunity to present contrary evidence in their Response, but opted not to do so. The time has now passed. Thus, the Court has no basis whatsoever to conclude that Mr. Loveland is currently receiving this therapy, or that the scenes of

him receiving therapy several years ago accurately portray Mr. Loveland's day-to-day life today. Again, this renders these portions of the Video inadmissible. *See id.*

Plaintiffs, in sum, had the ability to put together an accurate and admissible day-in-the-life video, but they chose not to do so. The Video they did put together was rife with inappropriate content and material, and offering to play the Video without audio does not solve these problems. Given Plaintiffs' approach to Video in the first instance, neither the Court nor Goodyear should be burdened any further on this score with reviewing another video without audio, or a truncated version of the video made pursuant to any concessions Plaintiffs might make in the future. The Court, therefore, should grant Goodyear's Motion in Limine in its entirety.

### **CONCLUSION**

For each of the foregoing reasons, Goodyear respectfully requests that the Court enter an Order barring Plaintiffs from introducing the "Day in the Life video of Shane Loveland," or any iteration of that Video, into evidence at trial.

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with NECivR 7.1(d)(3) and further certify that the word count function was applied to include all text, including the caption, headings, footnotes, and quotations. This document was prepared using Microsoft Word 2010 and contains 968 words.

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/s/ Edward S. Bott, Jr.

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed with the Clerk of the Court and served upon all attorneys of record using the CM/ECF system this 18th day of February, 2020.

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